

EXHIBIT

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III. FACTUAL BACKGROUND

On October 4, 2018, Ulrich was a 20-year-old student at Auburn University, living at an apartment complex known as 319 Bragg. The rear parking lot of 319 Bragg abutted railroad tracks owned and maintained by CSX. (Doc. 61 at 2–3.) To attend her classes, Ulrich had to cross over the tracks at least twice daily. (Doc. 85-1 at 3.)

On that tragic afternoon, Ulrich was returning to 319 Bragg from her classes. (Doc. 61 at 2, 13; Doc. 85-1; Doc. 85-20.) The weather was clear, and the line of sight up and down the tracks was unobstructed, except for the vehicles stopped at the grade crossing that were waiting to cross. (Doc. 85-23; Doc. 103-1; Doc. 104-1 at 3.)

Video of the accident shows that as a CSX train traveled down the tracks at approximately 38 mph (a speed well below the 60 mph limit),¹ Ulrich approached the marked grade crossing from the right as she walked down North Donahue Drive. (Doc. 69-1 at 5; Doc. 73-1; Doc. 103-1.) When she approached the grade crossing, the crossing gate was activated and down, thereby blocking vehicles and pedestrians from crossing over the tracks while the train approached. (Doc. 69-1 at 5; Doc. 103-1; Doc. 103-2; Doc. 104-1 at 3.) The mast-mounted crossing lights were activated

¹ The train had a video camera, called a Locomotive Digital Recorder (LDR), in the front of the train that recorded the accident. (See Doc. 73-1.) Ulrich does not recall any details from the accident. (Doc. 85-1.)

and flashing (Doc. 69-1 at 5; Doc. 103-1; Doc. 103-2; Doc. 104-1 at 3), and the train's horn was sounding (Doc. 69-1 at 4).

Despite all these warnings, Ulrich proceeded to walk toward the grade crossing while also talking on her cellular phone. She then turned to her right within feet of the activated gate. (Doc. 61 at 13; Doc. 69-1 at 5, 61; Doc. 83-1 at 2; Doc. 85-20; Doc. 104-1 at 3.) From there, she walked off the grade crossing and onto the crushed granite right-of-way parallel with the tracks with her back to the approaching train. As she alleges in her Complaint, "she was on her phone talking to her mother while attempting to cross CSX's tracks via her usual and customary path, as she had done hundreds of times before." (Doc. 61 at 13.) Tragically, within feet of the grade crossing, Ulrich was struck by the train's pilot (sometimes called a cow catcher). Fortunately, she survived the accident.

IV. PROCEDURAL HISTORY

Ulrich initially filed this lawsuit on September 25, 2020, in the Northern District of Illinois against CSX Transportation, Inc., 319 Bragg Student Housing Auburn, AL LLC, and Greystar Worldwide, LLC. (Doc. 1.) The case subsequently was transferred to this Court in the interests of justice under 28 U.S.C. § 1631 (2018). (Doc. 28.)

On the last day to amend the pleadings, Ulrich filed a First Amended Complaint but without seeking leave of court and without the consent of opposing